

No. 12623

United States  
Court of Appeals  
for the Ninth Circuit.

PACIFIC AMERICAN FISHERIES, INC.,  
Appellant,

vs.

M. P. MULLANEY, COMMISSIONER OF TAX-  
ATION, TERRITORY OF ALASKA,  
Appellee.

Transcript of Record

Appeal from the District Court  
for the Territory of Alaska  
Division Number One.

FILED

SEP 19 1950

PAUL P. O'BRIEN,

CLERK



No. 12623

---

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

PACIFIC AMERICAN FISHERIES, INC.,  
Appellant,

vs.

M. P. MULLANEY, COMMISSIONER OF TAX-  
ATION, TERRITORY OF ALASKA,  
Appellee.

---

Transcript of Record

---

Appeal from the District Court  
for the Territory of Alaska  
Division Number One.



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Cost Bond on .....	40
Notice of .....	39
Affidavit of M. P. Mullaney, Commissioner of Taxation .....	26
Answer .....	33
Attorneys of Record .....	1
Bond on Temporary Restraining Order .....	19
Clerk's Certificate (D.C.) .....	47
Complaint for Injunction and Other Relief ....	2
Exhibit A—Affidavit of S. G. Tarrant .....	11
Cost Bond on Appeal .....	40
Designation of Portions of Record of Proceed- ings to be Included in the Record on Appeal	42
Memorandum Opinion .....	28, 30
Minute Order, Entered June 30, 1950 .....	37
Motion for Judgment on the Pleading .....	36
Notice of Appeal .....	39

	INDEX	PAGE
Order Denying Application for Preliminary In- junction .....		31
Order to Show Cause and Temporary Restraining Order .....		16
Statement of Points Relied on by Appellant .44,		49
Stipulation re Printing of Record .....		46
Summary Judgment .....		38
Supplement Affidavit of S. G. Tarrant .....		22

ATTORNEYS OF RECORD

FAULKNER, BANFIELD & BOOCHEVER,

H. L. FAULKNER,

Juneau, Alaska,

For Appellant.

J. GERALD WILLIAMS,

Territorial Attorney General,

Juneau, Alaska,

JOHN H. DIMOND,

Assistant Territorial Attorney General,

Juneau, Alaska,

For Appellee.

In the District Court for the Territory of Alaska  
Division Number One at Juneau  
Civil Action, File Number 6137-A

PACIFIC AMERICAN FISHERIES, INC.,  
Plaintiff,

vs.

M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska,  
Defendant.

COMPLAINT FOR INJUNCTION  
AND OTHER RELIEF

For cause of action against the defendant, the plaintiff alleges:

I.

This action arises under Chapter 66 of the Session Laws of Alaska 1949, and the Court has jurisdiction of this cause by virtue of the provisions of Section 53-2-1 of Alaska Compiled Laws Annotated 1949 (Section 3302 CLA 1933).

II.

That plaintiff is a corporation organized under the laws of the State of Delaware and authorized to do business in the Territory of Alaska and that it has complied with all the laws of the Territory with reference to foreign corporations doing business therein and it has paid all its annual license fees due the Territory and it is engaged in salmon fishing and in the preparation of salmon for food and in the canning and packing thereof, at various



places in Alaska in both the First and Third Judicial Divisions, and that it employs approximately 400 non-resident fishermen as that term is defined by Chapter 6 of the Session Laws of Alaska 1949. This includes not only full time employees of plaintiff but those non-residents from whom plaintiff purchases fish.

### III.

That defendant is the Commissioner of Taxation of the Territory of Alaska and charged with the duty of collecting and enforcing the collection of all taxes and license fees imposed by the laws of Alaska, and he and his deputies and agents are vested with police powers to enforce tax laws and license laws; and he resides within the Territory of Alaska, First Judicial Division at Juneau; and he is being sued on account of acts which he immediately intends and threatens to perform under color of law, in his official capacity as such Commissioner of Taxation.

### IV.

That at the regular 1949 Session of the Alaska Legislature there was passed an act designated Chapter 66 of the Session Laws of Alaska 1949, imposing a license tax of \$50.00 annually on non-resident fishermen as defined therein, and \$5.00 per annum on resident fishermen, and in the act a non-resident fisherman is described as a citizen who has not resided in Alaska for twelve months immediately preceding the application for license or one who maintains his principal business or place of abode outside the Territory, and this purported law was approved by the Governor of Alaska on

March 21, 1949, and reference is made thereto for its provisions.

#### V.

That Chapter 66 is invalid and of no force or effect because it imposes a higher tax on non-residents than on residents; it makes an unlawful distinction between residents and non-residents and wrongfully defines a non-resident, and it was passed in violation of Sections 9 and 8\* of the Organic Act of Alaska (37 Stat. 512); and in violation of Section 3, Page 50, Volume 1, Alaska Compiled Laws 1949 (Sec. 464 CLA 1933); and in violation of the 5th and 14th Amendments to the Constitution of the United States; and in violation of Section 41, Title 8, USCA (Rev. Stat. Sec. 1977).

#### VI.

That in the collection of license taxes which the Territory of Alaska is permitted to impose under the provisions of the Organic Act of Alaska, there is no additional enforcement burden imposed upon the Territory in the collection of taxes on non-residents and no additional enforcement regulations are required, no additional expenditures are necessary in the collection of such license fees and taxes on non-residents engaged in salmon fisheries, and no taxes are levied upon residents of the Territory, any part of which are required for conservation or enforcement expenditures or expenses of collection of taxes from non-residents in addition to the expenses required for the collection thereof from residents; that there is no basis in law or in fact and

on application of appellant, the District Court on June 30, 1950, in open court, permitted amendment of "and" to "and" to paragraph V.

no power given the Territory to discriminate between residents and non-residents in the matter of fishing licenses; that the collection of taxes from non-residents engaged in salmon fisheries of Alaska is less burdensome, less expensive and requires less effort on the part of the Territory than the collection of taxes from residents, and this is particularly true with reference to the taxes levied under the provisions of Chapter 66, Session Laws of Alaska 1949, and it is especially true with reference to those engaged in salmon fisheries, including the plaintiff.

#### VII.

That the 400 non-residents hereinabove mentioned employed by the plaintiff and from whom the plaintiff purchases salmon during the season of 1949, are all subject to the \$50.00 tax imposed by the provisions of Chapter 66, and plaintiff purchases fish from both resident and non-resident fishermen; and that Chapter 66 is purely a revenue measure.

#### VIII.

That defendant and his deputies and agents have demanded from the plaintiff payment of the \$50.00 tax levied by the provisions of Chapter 66, on each non-resident employed in plaintiff's fishing operations, who is defined as a fisherman under the provisions of Chapter 66, and on each non-resident from whom plaintiff purchases fish, and defendant and his deputies and agents have threatened plaintiff with criminal prosecution and with arrest of its non-resident employees and of the non-resident

fishermen from whom it purchases fish, unless plaintiff pays the tax of \$50.00 on each non-resident employee and non-resident fisherman as defined in the Act; and he has threatened to disrupt and destroy plaintiff's canning operations and destroy its investment necessary to its fishing and canning operations, thereby causing plaintiff great financial loss and irreparable injury.

That at Naknek, Alaska, where one of plaintiff's salmon canneries is situated, during the month of July, 1949, the defendant sent his deputies and agents to plaintiff's property with warrants of arrest and by means of threats and coercion forced plaintiff and its employees and non-resident fishermen from whom plaintiff purchases fish, to pay to the defendant the sum of approximately \$4,000.00 in non-resident fishermen's license taxes, and plaintiff was forced to pay this amount or, in the alternative, close its fishing operations, thereby suffering great financial loss and irreparable injury; and that there remain approximately 320 non-resident fishermen in plaintiff's employ in Alaska, and non-residents from whom plaintiff purchases fish, and upon whom it depends for its fish supply in its cannery operations; and defendant is threatening plaintiff and its employees with criminal prosecution, fines and jail sentences, unless the license tax levied by Chapter 66 aforesaid is paid immediately on each of the aforesaid 320 men.

## IX.

That attached hereto is an affidavit of S. G. Tarrant, which gives the details of plaintiff's fishing

and canning operations in Alaska, and names the places where plaintiff carries on a large number of operations, and this affidavit is made a part of this Complaint and marked "Exhibit A" and prayed to be read as a part hereof.

### X.

That in preparation for the salmon fishing season, the plaintiff has been obliged to expend large sums of money in the purchase of equipment, cans, boxes, fishing gear, supplies of various kinds, and in the transportation of men and supplies to the Territory, and it has paid numerous license fees required by the laws of the Territory for engaging in salmon fishing and canning. The salmon canning season is different in different localities according to the time when the fish run, and it has been greatly curtailed during the present season, so that unless plaintiff is permitted to carry on its fishing and canning operations during the times prescribed by the Fish and Wildlife Service of the United States, which has exclusive jurisdiction to regulate the fisheries of Alaska, it will suffer a financial loss which will be very great and irreparable, and if defendant and his agents and deputies carry out the threats they have made to begin criminal prosecution against plaintiff and the non-resident fishermen from whom it gets a large part of its fish supply, plaintiff's operations will be disrupted and its business destroyed and the large sums of money expended by it in preparation for its canning operations for the 1949 season will be lost.

## XI.

That under some of its union contracts with its non-resident fishermen employees and non-residents from whom it purchases fish, plaintiff is bound to pay all fishing fees lawfully levied by the Territory of Alaska, and under other contracts the non-residents are bound to pay the tax and in some instances the plaintiff is obligated to pay the tax on certain classes of non-residents as defined in Chapter 66, and on others the individuals engaged in fishing are obligated to pay the tax, and plaintiff has no means of requiring those to pay the tax even under protest, but it is liable to heavy fines and to criminal prosecution and severe penalties for having in its employ fishermen as defined in Chapter 66, who do not pay the tax, and to similar fines and severe penalties for purchasing fish from non-resident fishermen who shall fail to pay the tax, and by virtue of the provisions of Chapter 66 and the penalties which it imposes, plaintiff, in order to carry on its fishing operations, must itself pay a tax which is not imposed upon it but which is imposed upon fishermen in its employ and non-residents from whom it purchases fish, whether it is obligated to do so by its union contracts or not.

## XII.

That the amount of the tax under the provisions of Chapter 66 aforesaid, which defendant is demanding from the plaintiff in addition to that already paid, is approximately \$16,000.00, and plaintiff is threatened with an immediate, substantial

and irreparable injury for which it has no adequate remedy at law, because of defendant's demands and threats and the acts of defendant and his deputies and agents as hereinabove alleged, and plaintiff's only remedy is by injunction of this court.

Wherefore, plaintiff prays:

1. That process issue against the defendant to answer this Complaint (but not under oath or affirmation, the benefit whereof is expressly waived by plaintiff).

2. That pending a hearing on plaintiff's application for a preliminary injunction, the Court issue herein a temporary restraining order restraining defendant and his agents and deputies from doing any act or thing for the purpose of enforcing the provisions of Chapter 66, Session Laws of Alaska 1949, which apply to non-resident fishermen as therein defined, or for the purpose of collecting from plaintiff any part of the tax levied on non-resident fishermen or from interfering with the operations of non-resident fishermen in the employ of plaintiff and those from whom plaintiff purchases fish.

3. That after notice and hearing this Court grant to plaintiff a preliminary injunction restraining defendant and his agents and deputies from doing any act or thing for the purpose of enforcing the provisions of Chapter 66, Session Laws of Alaska 1949, which apply to non-resident fishermen as therein defined, or for the purpose of collecting from plaintiff

any part of the tax levied on non-resident fishermen or from interfering with the operations of non-resident fishermen in the employ of plaintiff and those from whom plaintiff purchases fish.

4. That upon final hearing this Court enter a final order and decree to the same effect.

5. That upon the final hearing the Court enter an order adjudging and decreeing that Chapter 66 of the Session Laws of Alaska, 1949, is null and void and of no legal force or effect as it applies to non-resident fishermen as therein defined, and to fishermen engaged in the salmon fishing industry.

6. That the Court grant such other relief as may seem meet in the premises.

PACIFIC AMERICAN  
FISHERIES, INC.,

By /s/ S. G. TARRANT,

Vice-President.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,

Attorneys for Plaintiff.

United States of America,  
Territory of Alaska—ss.

I. S. G. Tarrant, being first duly sworn on oath, depose and say: That I am Vice-President of the



Pacific American Fisheries, Inc., the plaintiff hereinabove named, and make this affidavit on its behalf, and I am authorized to do so; that I have read the foregoing Complaint and know the contents thereof and the facts therein stated are true and correct as I verily believe.

/s/ S. G. TARRANT.

Subscribed and sworn to before me this 4th day of August, 1949.

[Seal] /s/ R. BOOCHEVER,

Notary Public for Alaska.

My Commission Expires October 20, 1951.

EXHIBIT "A"

Affidavit of S. G. Tarrant

United States of America,  
Territory of Alaska—ss.

I, S. G. Tarrant, being first duly sworn, depose and say:

1. That the Pacific American Fisheries, Inc., is a corporation organized under the laws of Delaware and authorized to do business in the Territory of Alaska and it has been doing business therein for more than 25 years and it is engaged in fishing for salmon and canning and shipment of salmon and fish products and in the general fisheries business within the Territory of Alaska and that it has paid all of its corporation license taxes due the Territory, filed its annual reports and qualified in

every respect as a corporation to do business in Alaska.

2. That I am Vice-President of the Pacific American Fisheries, Inc., and production manager and in charge of all fisheries operations of the company within the Territory of Alaska and have general charge thereof.

3. That the plaintiff, Pacific American Fisheries, Inc., operates salmon canneries at Nushagak, Naknek, Port Moller, King Cove, Squaw Harbor, Alitak, Kasaan, and it has joint fishery and cannery operations with other corporations and conducts its operations in the Third and First Judicial Divisions of the Territory, and that it employs both residents and non-residents in its fishing and canning operations.

4. That the corporation employs at the present time approximately 325 non-residents in its fisheries operations including fishermen, trap watchmen, tender crews and others who are subject to the provisions of Chapter 66 of the Session Laws of Alaska, 1949.

5. That the defendant, M. P. Mullaney, Commissioner of Taxation of the Territory of Alaska, has demanded of the Pacific American Fisheries, Inc., payment of the \$50.00 non-resident tax imposed by the provisions of Chapter 66 on non-resident employees of the corporation, and he has threatened the corporation with criminal prosecution unless payment of the tax is made.

6. That at Naknek, Alaska, during the month of July, 1949, the defendant, M. P. Mullaney, Commissioner of Taxation, and his deputies and agents, threatened the company and its employees with immediate arrest unless the payment was made of the \$50.00 tax imposed by the provisions of Chapter 66, on each non-resident employee of the company, and they threatened the corporation with criminal prosecution on account of its employment of non-resident fishermen and employees, unless the tax of \$50.00 each was paid on all non-resident employees, and on account of its purchases of fish from non-resident fishermen.

7. That in order to avoid arrest and criminal prosecution, the company and its employees paid to the Tax Commissioner approximately the sum of \$4,000.00 as the tax on 80 employees.

8. That there are approximately 245 non-resident employees of the company engaged in fishing operation in the Territory of Alaska and in the First and Third Judicial Divisions, upon whom the tax has not been paid, but who have been threatened with criminal prosecution if it is not paid, and the company has also been threatened with criminal prosecution for its employment of these non-residents without the payment of the tax and for purchasing fish from them.

9. That included in the numbers hereinabove given are independent fishermen who are not employees of the company, but from whom the company buys fish, and the company is threatened with

criminal prosecution for the purchase of fish from these fishermen unless the tax of \$50.00 is paid.

10. That the company is obliged to carry on all of its operations in the Territory under contracts with various fishermen's and cannery workers' unions and other unions such as machinists, etc., and by the terms of some of its union contracts the company is obligated to pay all lawful license taxes levied on its employees and fishermen, both residents and non-residents, and under the provisions of Chapter 66, Session Laws of Alaska, 1949, the company is subjected to a criminal penalty and to criminal prosecution and large fines for non-payment of the non-resident fishermen's tax of \$50.00 or for employing non-residents who do not pay the tax or for purchasing fish from non-residents who do not pay the tax.

11. That the total tax which the Territory is demanding from the company under the provisions of Chapter 66, Session Laws of Alaska, 1949, is approximately \$12,250.00, in addition to the \$4,000.00 already paid.

12. That I have had many years experience in fishing and in supervising fishing operations in the Territory of Alaska, and I am familiar with the methods employed for hiring men and for purchasing fish from fishermen; that under the laws of the Territory the duty of collecting license taxes due from fishermen and from employees of corporations operating canneries and engaged in fisheries in Alaska is imposed upon the operators, including

Pacific American Fisheries, Inc.; that this applies to the purchase of fish from resident and non-resident fishermen; that the tax on non-resident fishermen is always collected through the operators including Pacific American Fisheries in its operations, and this has been in accordance with the law and the practice for many years and this obligation is imposed under the provisions of Chapter 66 of the Session Laws of Alaska, 1949, and all other taxing laws; that the Territory has no additional expense, requires no additional enforcement officers and is put to no additional effort and to no inconvenience in the matter of collecting license taxes from non-residents, and the collection of taxes and license fees from non-residents engaged in salmon fisheries, under the provisions of the laws of the Territory and under the practice of the Territory and its officials, is less expensive, requires less supervision and fewer enforcement officers than the collection of the tax from residents.

/s/ S. G. TARRANT.

Subscribed and sworn to before me the 3rd day of August, 1949.

[Seal] /s/ R. BOOCHEVER,

Notary Public for Alaska.

My Commission Expires October 20, 1951.

[Endorsed]: Filed August 5, 1949.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER

This matter having come on this day before the court upon the application of the plaintiff above-named for an order directed to the defendant ordering him to show cause why a temporary injunction should not be issued herein, and for a temporary restraining order pending the hearing on the application for temporary or preliminary injunction; and the sworn complaint of plaintiff and the affidavit of S. G. Tarrant having been filed and considered; and it appearing to the court that defendant is threatening to cause criminal prosecution to be instituted against the plaintiff and to cause the arrest and imprisonment, or the imposition of fines or both on non-resident fishermen in the employ of the plaintiff and on non-resident fishermen from whom plaintiff purchases salmon in Alaska, under the provisions of Chapter 66 of the Session Laws of Alaska, 1949; and it appearing that Chapter 66 levies a tax of \$5.00 on each resident fisherman engaged in salmon fishing in Alaska, and a tax of \$50.00 on each non-resident fisherman and that it prohibits the employment of anyone by the plaintiff who is classified by Chapter 66 as a non-resident fisherman unless the tax is first paid; and that it prohibits the purchase of salmon from independent fishermen who are classed as non-residents, unless the tax is first paid; and that plaintiff in its salmon packing operations obtains its fish supply in large

part from 400 non-residents as such are defined by Chapter 66, Session Laws of Alaska, 1949, some of whom are in the employ of plaintiff and others independent fishermen; and it further appearing from the sworn complaint and from the affidavit filed therewith,

That plaintiff has made extensive preparations for the canning of salmon at different canneries in the First and Third Judicial Division, and has expended a large sum of money in the preparations, and that if it is prohibited from taking fish from fishermen because they have not paid the non-resident fishermen's tax, it will be deprived of a large part of its necessary fish supply and the expenditures already incurred will in a large measure be lost and that the injury to plaintiff will be irreparable, and that plaintiff has no adequate remedy at law and no remedy save through injunction and restraining order, and

The court having already held in the case of *Martinson et al. vs. Mullaney* that under the circumstances and facts alleged and set forth in the complaint in the above-entitled cause, and in the affidavit filed on behalf of the plaintiff, if true and not successfully controverted, the tax of \$50.00 on non-resident fishermen engaged in handling halibut as against a tax of \$5.00 on residents similarly engaged, is invalid,

It Is Now Therefore Ordered That the defendant above-named is hereby cited to appear before this court at Juneau, Alaska at 2:00 p.m. on the 12th day

of August, 1949, and show cause, if any there be, why an injunction pendente lite should not be granted enjoining and restraining him and all his deputies and agents from doing any act or thing for the purpose of collecting from plaintiff or its non-resident employees or non-resident fishermen from whom plaintiff purchases fish any amounts claimed to be due the Territory of Alaska under the provisions of Chapter 66, Session Laws of Alaska, 1949, and from interfering with plaintiff's purchase of fish from non-resident fishermen who have not paid the tax imposed, and pending the hearing on plaintiff's application for preliminary injunction herein.

It Is Further Ordered that defendant and his agents and deputies be, and they are hereby restrained from doing any of the acts and things set forth in the preceding paragraph of this order, and,

It Is Further Ordered that a certified copy of this order be served upon the defendant forthwith.

This order shall be in effect upon the condition that plaintiff file herein its bond to be approved by the Court in the penal sum of \$16,000.00 conditioned that plaintiff will pay to the defendant the tax on non-resident fishermen in its employ and on those from whom it purchases fish if this order is wrongfully issued or in the event judgment is rendered against the plaintiff.



Dated at Juneau, Alaska this 5th day of August, 1949.

/s/ GEORGE W. FOLTA,  
Judge.

Entered Court Journal No. 19, Page 233-34.

[Endorsed]: Filed August 5, 1949.

---

[Title of District Court and Cause.]

BOND ON TEMPORARY  
RESTRAINING ORDER

Know All Men by These Presents :

That we, the undersigned, Pacific American Fisheries, Inc., a corporation organized under the laws of the State of Delaware, doing business in Alaska, as Principal, and United States Fidelity and Guaranty Company, a corporation authorized to carry on insurance and surety business in Alaska, as Surety, are held and firmly bound unto M. P. Mullaney, Commissioner of Taxation for the Territory of Alaska, the above-named defendant, and his successors in office, for the benefit and indemnity of whom it may concern in the penal sum of Sixteen Thousand (\$16,000.00) Dollars lawful money of the United States of America, for the payment of which sum to the above-named defendant or his successors in office for the benefit and indemnity of whom it may concern, as aforesaid, we bind ourselves and each of us and our successors and assigns, jointly and severally, firmly by these presents.

Dated and sealed at Juneau, Alaska, this 5th day of August, 1949.

The condition of this obligation is such that whereas on August 5, 1949, the District Court for the Territory of Alaska, Division No. One, hereinabove mentioned, made and entered herein a Temporary Restraining Order enjoining and restraining the defendant pending the return on an Order to Show Cause issued on the same day in the above-entitled cause and in the same Restraining Order, from enforcing or attempting to enforce the provisions of Chapter 66, Session Laws of Alaska, 1949, against the plaintiff, so far as the provisions affect non-resident fishermen fishing in the Territory of Alaska who are in the employ of plaintiff, and non-resident fishermen in Alaska from whom plaintiff purchases fish and from doing any act or thing for the purpose of collecting from plaintiff or its non-resident employees engaged in fishing or non-resident fishermen from whom plaintiff purchases fish the non-resident tax claimed to be due on non-resident fishermen under the provisions of Chapter 66, Session Laws of Alaska, 1949, and from interfering with plaintiff's purchase of fish from non-resident fishermen who have not paid the tax imposed, all as more fully appears by reference to the Order to Show Cause and Temporary Restraining Order dated this day and on file in the above-entitled cause and which Order to Show Cause is returnable before the Court at 2 o'clock p.m. on August 12, 1949.

Now, Therefore, if the above-bounden Pacific

American Fisheries, Inc., a corporation, plaintiff hereinabove-named, its successors and assigns or either of them, shall at all times hereafter save and keep harmless M. P. Mullaney, Commissioner of Taxation for the Territory of Alaska, the defendant, and his successors in office and each of them, from and against any and all damages and costs that may arise by reason of the issuance of the Temporary Restraining Order and shall pay the tax on its non-resident fishermen employees and on non-resident fishermen from whom it purchases fish, if the provisions of Chapter 66, Session Laws of Alaska, 1949, are held by the Court to be valid as they apply to non-resident fishermen and as they apply to plaintiff, then this obligation shall be void, otherwise it shall remain in full force and effect.

This bond is a continuing bond and shall be in full force and effect pending the final disposition of the above-entitled cause unless otherwise ordered by the Court.

Dated at Juneau, Alaska, this 5th day of August, 1949.

PACIFIC AMERICAN FISHERIES, INC., a Corporation,

By /s/ H. L. FAULKNER,  
Its Attorney—Principal.

UNITED STATES FIDELITY AND GUAR-  
ANTY COMPANY, a Corporation,

By /s/ R. E. ROBERTSON,  
Its Attorney-in-Fact and  
Agent—Surety.

Executed in the Presence of:

/s/ PATRICIA L. WOOD.

/s/ G. WM. KRASILOVSKY.

Approved as to Form and Surety, This 5th Day of August, 1949.

/s/ GEORGE W. FOLTA,

District Judge.

Approved as to Form:

/s/ J. GERALD WILLIAMS,

Attorney General.

[Endorsed]: Filed August 5, 1949.

---

[Title of District Court and Cause.]

SUPPLEMENT AFFIDAVIT OF  
S. G. TARRANT

United States of America,  
Territory of Alaska—ss.

I, S. G. Tarrant, being first duly sworn, depose and say:

That I am Vice-President and Production Manager of the Pacific American Fisheries, Inc., the plaintiff hereinabove named, and I have been employed by the plaintiff for more than nineteen years with the exception of three years which I spent in the Armed Forces of the United States during the late war;

That I have been Production Manager in charge of all fishing and canning operations of the plaintiff in Alaska for more than two years and prior to that time I was Cannery Superintendent;

That I am familiar with all operations of the plaintiff in the Territory and with the method of collecting territorial taxes, including school tax and all license taxes due from the company and from its employees, and fishermen from whom it purchases fish;

That the custom has been for many years and now is for the Tax Commissioner to rely upon the company for collection of all license taxes due the Territory from fishermen, both residents and non-residents, and this is done without expense or effort upon the part of the Tax Commissioner or any other official of the Territory of Alaska. The bookkeeper of the company at the various canneries and where the company is carrying on operations, prepared each year a list of all those from whom taxes are due, both residents and non-residents, including fishermen's license taxes, and the bookkeeper makes out the applications and then issues one check for the entire amount of the tax due from both residents and non-residents, and forwards the check to the Tax Commissioner or to his deputy;

That there is no additional expense, no additional work and no additional effort required for the collection of taxes from non-residents, as against the tax from residents;

That the plaintiff, in its fishing and canning operations, at the various places set forth in my affidavit of August 3 on file herein, is required to invest large sums of money in preparation for the salmon pack each year and during the season of 1949 the plaintiff has invested approximately \$1,300,000 in preparation for its packing, its fishing and canning operations;

That the fishing season is fixed by the Fish and Wildlife Service of the United States which has control of the regulation of the fisheries for Alaska, and the seasons vary according to the fish run, and for the year 1949 most seasons have been shortened and they are very brief and they are approximately at follows:

Icy Straits Area .....	11½ days
Kasaan Area .....	15 days
Nushagak Area .....	11 days
Naknek Area .....	17 days
Port Moller Area .....	27 days
Kodiak Area .....	41 days
Alaska Peninsula Area .....	49 days.

That the Tax Commissioner is demanding of the plaintiff that it pay the tax on all non-resident fishermen in its employ and on all non-resident fishermen from whom it purchases fish, or cease to employ non-resident fishermen and cease to purchase fish from non-resident fishermen. The result of this is that the plaintiff must either pay a tax which is not imposed upon it or have its fisheries operations and cannery operations disrupted and its fishing

season shortened with consequent loss of a large portion of the sum invested in preparation as hereinabove set forth. This is illustrated by what happened at Naknek during the short fishing season there, as more fully set forth in my affidavit of August 3.

Plaintiff, therefore, is faced with the alternative of either paying the tax or of refusing to continue employing non-resident fishermen and refusing to purchase fish from non-resident fishermen upon whom the tax is imposed, and plaintiff must do one of those two things, either one of which will result in great loss and irreparable damage to the plaintiff, and plaintiff has no remedy at law, for if the tax is paid and Chapter 66 of the Sessions Laws of Alaska, 1949, is eventually held to be invalid in its application to non-resident fishermen, the plaintiff has no means of recovering the tax paid, for the plaintiff is not the taxpayer but only the collector under the provisions of the laws of Alaska.

/s/ S. G. TARRANT.

Subscribed and sworn to before me this 9th day of August, 1949.

[Seal]: /s/ JOHN C. DUNN,

Notary Public for Alaska.

My Commission Expires April 26, 1953.

Receipt of Copy Acknowledged.

[Endorsed]: Filed August 9, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF M. P. MULLANEY,  
COMMISSIONER OF TAXATION

United States of America,  
Territory of Alaska—ss.

I, M. P. Mullaney, being first duly sworn, depose and say:

(1) That I am the Commissioner of Taxation for the Territory of Alaska, and as such am charged by law with the duty of enforcing the tax laws of the Territory of Alaska, and in particular, with collecting and otherwise enforcing the license tax imposed on fishermen under Chapter 66, Session Laws of Alaska, 1949.

(2) That I have demanded payment of the \$50.00 non-resident license tax under the said Chapter 66 from various individual non-resident fishermen, some of whom were employed by plaintiff, but neither I nor, to my best knowledge and belief, any of my agents or employees have at any time demanded payment of said tax from plaintiff nor threatened plaintiff with criminal prosecution unless it makes payment of said tax.

(3) That there is no provision in Chapter 66 which requires that plaintiff, or any other cannery operator, pay the said license tax for the individual fishermen; and there is no provision in said statute which imposes criminal penalties on plaintiff, or any other cannery operator, for non-payment of the license tax imposed on the individual fishermen.



(4) That the Territory of Alaska is placed to additional burden and expense and to substantial inconvenience in the matter of collecting license taxes from non-resident fishermen, as compared with the collection of license taxes from resident fishermen.

(5) That since May, 1949, in which time two preliminary injunctions have been issued by this Court restraining the enforcement of two territorial tax statutes—one, in the case of Alaska Steamship Company vs. Mullaney, involving the Alaska Net Income Tax Act, Chapter 115, Session Laws of Alaska, 1949, and, two, in the case of P. E. Harris vs. M. P. Mullaney, involving Chapter II., Sessions Laws of Alaska, 1949, which increases the tax on fish traps and trap-caught fish, it has been my experience as Commissioner of Taxation that said injunctions have had the effect of causing many taxpayers other than those who have been parties to the above-mentioned suits, to refuse to pay the taxes due under the above-mentioned statutes. Because of this effect upon the public at large, it is my opinion that the use of injunctive process interfering with the enforcement of Chapter 66, Session Laws of Alaska, 1949, will cause many non-resident fishermen other than those employed by plaintiff to refuse to pay their license taxes, with resulting damage to the financial economy of the Territory of Alaska.

/s/ M. P. MULLANEY.

Subscribed and sworn to before me this 10th day of August, 1949.

[Seal]: FLORENCE B. OAKES,  
Notary Public for Alaska.

By Commission Expires January 10, 1953.

Receipt of Copy Acknowledged.

[Endorsed]: Filed August 11, 1949.

---

[Title of District Court and Cause.]

MEMORANDUM OPINION

FAULKNER, BANFIELD & BOOCHEVER,

For Plaintiff.

J. GERALD WILLIAMS,

Attorney General of Alaska, and

JOHN DIMOND,

Assistant Attorney General of Alaska,

For Defendant.

Plaintiff seeks to restrain the defendant from enforcing the penal provision of Chapter 66, A.C.L.A. 1949, subjecting persons who employ, or buy fish from, any unlicensed fisherman to prosecution and punishment. The complaint alleges that the statute is void, that plaintiff has no plain, speedy or adequate remedy at law, and that unless defendant is restrained plaintiff will suffer irreparable injury and damage.

Plaintiff employs, and also buys salmon from, non-resident fishermen. The complaint does not allege that they have refused to pay the license tax but merely that plaintiff is threatened with arrest and prosecution. Reduced to a simple statement, therefore, the case is that, if the fishermen do not pay the tax and plaintiff's officers or agents are arrested or prosecuted for having them in its employ or buying fish from them, plaintiff will suffer irreparable injury. This is insufficient to warrant the interposition of a court of equity. *Watson vs. Buck*, 313 U. S. 387, 400-1. Even if the fishermen refuse to pay the tax and the plaintiff is confronted with the necessity of itself paying the tax or closing down, it would appear that whatever plaintiff chose to do would be occasioned by the wrongful conduct of the fishermen rather than the lawful act of the defendant in attempting to collect the tax and that, hence, any measure either of restraint or coercion against the defendant would be misdirected and bring tax collections to a standstill.

It may be that the circumstances of the case are such as to work an unusual hardship on plaintiff and that the defendant should consent to the issuance of an injunction pending a hearing on the merits but, since defendant has not seen fit to do so, the Court is powerless to grant plaintiff the relief prayed for.

/s/ GEORGE W. FOLTA,  
District Judge.

[Endorsed]: Filed August 15, 1949.

him from collecting the license tax imposed on non-resident fishermen in Alaska under the provisions of Chapter 66, Session Laws of Alaska, 1949, and plaintiff appearing by its attorney, H. L. Faulkner, and defendant by his attorneys, J. Gerald Williams, Attorney General of Alaska, and John Dimond, Assistant Attorney General, and the Court having considered the pleadings and affidavits filed on behalf of the plaintiff and the defendant and having heard arguments of counsel, and having taken the matter under advisement, and having on August 15, 1949, filed a memorandum opinion herein.

It Is Now Hereby Ordered that the application for a preliminary injunction be, and it is, hereby denied, and

It Is Further Ordered that the temporary restraining order issued against the defendant on August 5, 1949, be, and it is, hereby dissolved and the bond filed on August 5, 1949, by the plaintiff in the sum of \$16,000 be, and it is hereby exonerated and the sureties thereon relieved of all further liability thereunder.

Done in open Court this 17th day of August, 1949.

/s/ GEORGE W. FOLTA,

Judge.

OK,

JOHN H. DIMOND,

Attorney for Defendant.

[Endorsed]: Filed August 17, 1949.

[Title of District Court and Cause.]

ANSWER

Comes now defendant above-named and in answer to the Complaint of plaintiff on file herein, admits, denies and alleges as follows:

1. Admits the allegations contained in Paragraph I of plaintiff's Complaint.

2. Admits the allegations contained in Paragraph II of plaintiff's Complaint with the exception of the averment that plaintiff employs approximately 400 non-resident fishermen, the truth as to which defendant is without knowledge or information sufficient to form a belief.

3. Admits the allegations contained in Paragraph III of plaintiff's Complaint.

4. Admits the allegations contained in Paragraph IV of plaintiff's Complaint.

5. Denies the allegations contained in Paragraph V of plaintiff's Complaint.

6. Denies the allegations contained in Paragraph VI of plaintiff's Complaint.

7. Referring to Paragraph VII of plaintiff's Complaint, admits the allegation that non-residents employed by plaintiff and from whom plaintiff purchases salmon during the season of 1949 are subject to the \$50.00 tax imposed by the provisions of Chapter 66; but with regard to the allegations that plaintiff employs 400 non-residents and that plaintiff purchases fish from both resident and non-resi-

dent fishermen, defendant is without knowledge or information sufficient to form a belief as to the truth of the same. Denies all the remaining material allegations in Paragraph VII.

8. Referring to Paragraph VIII of plaintiff's Complaint, admits the allegation that at Naknek, Alaska, during the month of July, 1949, the defendant sent one of his agents to plaintiff's property, but denies each and every other material allegation of said Paragraph VIII.

9. Referring to Paragraph X of plaintiff's Complaint, admits that the salmon canning season is different in different localities according to the time when the fish run, and admits that the Fish and Wildlife Service of the United States has exclusive jurisdiction to regulate the fisheries of Alaska; alleges that defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that the salmon canning season has been greatly curtailed during the present season and that in preparation for the salmon fishing season, plaintiff has been obliged to expend large sums of money in the purchase of equipment, cans, boxes, fishing gear, supplies of various kinds, and in the transportation of men and supplies to the Territory, and that plaintiff has paid numerous license fees required by the laws of the territory for engaging in salmon fishing and canning. Denies all the remaining material allegations contained in said Paragraph X.

10. Referring to Paragraph XI of plaintiff's

Complaint, admits that plaintiff is liable to fines and criminal prosecution and penalties for having in its employ fishermen as defined in Chapter 66 who do not pay the tax, and to similar fines and penalties for purchasing fish from non-resident fishermen who shall fail to pay the tax. Alleges that defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that under some of its union contracts with its non-resident fishermen employees and non-residents from whom it purchases fish, plaintiff is bound to pay all fishing fees lawfully levied by the Territory of Alaska, and under other contracts the non-residents are bound to pay the tax and in some instances the plaintiff is obligated to pay the tax on certain classes of non-residents as defined in Chapter 66, and on others the individuals engaged in fishing are obligated to pay the tax. Denies each and every other material allegation contained in said Paragraph XI.

11. Denies all the material allegations contained in Paragraph XII of plaintiff's Complaint.

Wherefore, defendant having fully answered the Complaint filed herein by plaintiff, prays that the plaintiff take naught by reason thereof and that the same be dismissed with prejudice.

J. GERALD WILLIAMS,

Attorney General of Alaska. Attorney for M. P. Mullaney, Commissioner of Taxation, Defendant.

JOHN H. DIMOND,  
Assistant Attorney General. Attorney for M. P.  
Mullaney, Commissioner of Taxation, Defend-  
ant.

Receipt of Copy Acknowledged.

[Endorsed]: Filed August 24, 1949.

---

[Title of District Court and Cause.]

MOTION FOR JUDGMENT ON THE  
PLEADINGS

Comes now defendant above-named and moves that judgment be entered for defendant herein on the pleadings and that plaintiff's and intervenors' complaints herein be dismissed. In support of such motion defendant alleges as follows:

1. In the case of *Anderson vs. Mullaney*, No. 6102-A, decided by this court on March 21, 1950, it was held that the classification of fishermen into residents and non-residents pursuant to the provisions of Ch. 66 S.L.A., 1949, was valid and did not violate the Constitution of the United States or the Organic Act of Alaska. In the principal case the validity of the same statute is in issue, and the legal issues raised and thoroughly considered and argued in the *Anderson* case are identical with the legal issues raised here; and since such issues were decided in favor of the validity of the statute, in the latter case, plaintiff's and intervenors' complaints are now insufficient in law and do not state a claim upon which relief can be granted.



2. Even if Ch. 66 S.L.A., 1949, were invalid and unconstitutional, a permanent injunction, being the relief demanded by plaintiff and intervenors, could not be granted here since courts of equity do not restrain actual or threatened criminal prosecutions for violations of statutes, and this court has already held, in its two memorandum opinions filed in this case on August 15, 1949, and August 16, 1949, that the alleged threatened criminal prosecutions in this case are insufficient to warrant the interposition of a court of equity. Therefore, plaintiff's and intervenors' complaints do not state claims upon which injunctive relief can be granted.

Dated at Juneau, Alaska, this 8th day of May, 1950.

J. GERALD WILLIAMS,  
Attorney General of Alaska.

JOHN H. DIMOND,  
Assistant Attorney General.  
Attorneys for Defendant.

Receipt of Copy Acknowledged.

[Endorsed]: Filed May 8, 1949.

---

MINUTE ORDER ENTERED JUNE 30, 1950

[Title of Cause.]

The arguments in the above-listed cases was continued, after which the court denied the motion for consolidation of cases and took the motion for judg-

ment on the pleadings under advisement. Later the same day the court granted the motion for judgment on the ground that there is no issue of fact in view of the lack of power to grant injunctive relief.

---

[Title of District Court and Cause.]

### SUMMARY JUDGMENT

This matter came on regularly to be heard on the 30th day of June, 1950, on defendant's motion for judgment on the pleadings. Plaintiff and intervenors above-named were represented by their counsel, H. L. Faulkner, of the firm of Faulkner, Banfield and Boochever, of Juneau, Alaska; defendant was represented by his counsel, John H. Dimond, Assistant Attorney General, Territory of Alaska. The court having read and considered the pleadings on file herein and having heard the arguments of respective counsel, and having considered matters outside of the pleadings which were presented in argument and not excluded by the court, and the court being fully advised in the premises and good cause appearing therefor; it is hereby

Ordered, Adjudged and Decreed that defendant's motion for judgment on the pleadings be treated as a motion for a summary judgment, and as so treated, the same be and it hereby is granted; that judgment for defendant be and hereby is entered herein; and that the complaint of plaintiff and the complaints in intervention of the intervenors above-named be and the same hereby are dismissed.

Plaintiff's and the above-named intervenors' exceptions are hereby allowed.

Each party shall pay its own costs.

Done in Open Court at Juneau, Alaska, this 7th day of July, 1950.

GEORGE W. FOLTA,

District Judge.

Entered Court Journal No. 19, Page 475.

Duly verified.

[Endorsed]: Filed June 7, 1949.

---

[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Comes now the above-named plaintiff and notifies the defendant and all parties interested that it hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order denying plaintiff's application for preliminary injunction entered August 17, 1949, and from the Summary Judgment entered herein on July 7, 1950, and filed and entered on that day.

FAULKNER, BANFIELD &  
BOOCHEVER,

Attorneys for Plaintiff and  
Appellant.

Copy received this 14th day of July, 1950.

JOHN DIMOND,

Assistant Attorney General of Alaska, Attorney for  
Defendant.

[Endorsed]: Filed June 14, 1949.

---

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents, that we, Pacific American Fisheries, Inc., a corporation, the plaintiff above-named, as principal, and United States Fidelity and Guaranty Company, a corporation authorized to transact surety business in the Territory of Alaska, as surety, are held and firmly bound unto the above-named M. P. Mullaney, Commissioner of Taxation of the Territory of Alaska and his successors in office, for the benefit and indemnity of whom it may concern, in the penal sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said M. P. Mullaney, the defendant above-named, or his successors in office, and for the benefit and indemnity of whom it may concern, for which payment well and truly to be made we bind ourselves and our successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated this 14th day of July, 1950.

Whereas, upon the 7th day of July, 1950, in a suit pending in the District Court for the Territory of Alaska, First Judicial Division, between the plaintiff and the defendant above-named, a Summary Judgment was rendered in favor of defendant and against plaintiff, dismissing plaintiff's complaint and certain complaints in intervention; and the plaintiff has filed notice of appeal to the United States Court of Appeals for the Ninth Circuit,

Now Therefore, the condition of this obligation is such that if the plaintiff appellant above-named and the principal hereon shall prosecute its appeal to effect and answer all costs if the appeal be dismissed, or it be affirmed by Judgment of the appellate court, and all such costs as the appellate court may award, if the judgment be modified, then this obligation to be void, otherwise to remain in full force and effect.

PACIFIC AMERICAN FISHERIES, INC.,  
A Corporation.

By /s/ H. L. FAULKNER,

Its Attorney in Fact,  
Principal.

UNITED STATES FIDELITY & GUARANTY  
COMPANY, a Corporation,

By /s/ R. E. ROBERTSON,

Its Attorney in Fact,  
Surety.

OK as to form and surety. Copy received this 14th day of July, 1950.

/s/ JOHN DIMOND,

Assistant Attorney General of Alaska, Attorney for Defendant.

[Endorsed]: Filed June 14, 1949.

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD  
AND PROCEEDINGS TO BE INCLUDED  
IN THE RECORD ON APPEAL

To the Clerk of the Above-entitled Court:

You will please prepare transcript of record in the above-entitled cause to be filed in the office of the Clerk of the U. S. Court of Appeals for the Ninth Circuit sitting at San Francisco, California, upon plaintiff's appeal, and include therein the following-described papers and records, to wit:

1. Plaintiff's complaint for injunctive and other relief, with affidavit of S. G. Tarrant attached thereto dated August 3, 1949.
2. Order to Show Cause and Temporary Restraining Order dated August 5, 1949.
3. Bond on temporary restraining order.
4. Supplemental affidavit of S. G. Tarrant dated August 9, 1949.
5. Affidavit of M. P. Mullaney, defendant, dated August 10, 1949.

6. Memorandum Opinion of Court filed August 15, 1949.

7. Memorandum Opinion of Court filed August 16, 1949.

8. Order Denying Application for Preliminary Injunction filed August 17, 1949.

9. Answer of defendant to plaintiff's complaint filed on August 24, 1949.

10. Motion for Judgment on pleadings filed May 8, 1950, and Minute Order granting Summary Judgment on June 30, 1950, appearing on page 470-471 in Journal No. 19.

11. Summary Judgment dated July 7, 1950.

12. Notice of Appeal.

13. Cost Bond on Appeal.

14. This designation of portions of record to be included.

15. Statement of Points relied on by appellant.

16. Stipulation re: printing of record.

Dated at Juneau, Alaska, July 14th, 1950.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,

Attorneys for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed July 14, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED ON  
BY APPELLANT

The appellant intends to rely upon the following points on appeal:

I.

The Court erred in making and entering the Order of August 17, 1949, denying the application for Preliminary Injunction and dissolving the Restraining Order issued on August 5, 1949.

II.

The Court erred in making and entering the Summary Judgment which is based on the Minute Order of June 30, 1950, which states that "There is no issue of fact in view of the lack of power to grant injunctive relief."

III.

The Court erred in granting the motion for Summary Judgment against the plaintiff-appellant without giving it an opportunity to litigate the questions of fact and of law set forth by the pleadings. Plaintiff had prayed for injunctive relief and alleged irreparable injury and that it had no plain, speedy or adequate remedy at law to prevent that injury; and plaintiff had no opportunity to present its evidence on that point.

IV.

The Court erred in granting the Summary Judgment of July 7, 1950, without giving plaintiff an opportunity to present to the Court the issues raised



by the allegation that Chapter 66, Session Laws of Alaska, 1949, was passed in violation of Section 8 of the Organic Act of Alaska, 48 U.S.C.A. Section 76; 37 Stat. 514.

V.

The Court erred in basing its Summary Judgment on the Motion for Judgment on the pleadings which was on the theory that the only question presented by plaintiff in this cause was that of the right and power of the Legislature to discriminate in the matter of license fees between resident and non-resident fishermen, and that the only issue involved was the validity of the license tax; whereas, plaintiff should have had an opportunity to present to the Court the issue of whether, even if the license tax were valid as imposed on non-resident fishermen, its application to plaintiff, imposing on it severe penalties and submitting it to irreparable injury for failure to act as tax collector, was invalid.

Dated at Juneau, Alaska, July 14, 1950.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,

Attorneys for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed June 14, 1949.

[Title of District Court and Cause.]

### STIPULATION RE PRINTING OF RECORD

It Is Hereby Stipulated and Agreed by and between Faulkner, Banfield & Boochever, attorneys for above-named plaintiff-appellant, and John Dimond, Assistant Attorney General of Alaska, attorney for defendant-appellee, that the portions of the record to be printed in the above-entitled cause shall be those portions only which are set forth in plaintiff-appellant's Designation of Portions of Record and Proceedings to be Included in the Record on Appeal, and that all other portions of the record in this cause may be omitted and that the title of the court and cause in full shall be omitted from all papers, except on the first page of the record, and that there shall be inserted in place of the title in all papers used as a part of the record the words "Title of Court and Cause" and also that all endorsements on all papers used as a part of the record may be omitted, except the Clerk's filing marks and admissions of service.

Dated at Juneau, Alaska, July 14th, 1950.

FAULKNER, BANFIELD &  
BOOCHEVER,

Attorneys for Plaintiff.

JOHN DIMOND,

Assistant Attorney General for Alaska, Attorney  
for Defendant.

[Endorsed]: Filed June 14, 1949.

CLERK'S CERTIFICATE

United States of America,  
Territory of Alaska—ss.

I, J. W. Leivers, Clerk of the U. S. District Court  
for the Territory of Alaska, First Judicial Division,

Do Hereby Certify that the foregoing and hereto  
attached 36 pages of typewritten matter numbered  
from 1 to 36 both inclusive, constitute a full, true  
and complete copy and the whole thereof of the  
record prepared in accordance with the Designation  
of Portions of the Record to be Included in the Rec-  
ord on Appeal of the plaintiff-appellant on file  
herein and made a part hereof in cause No. 6137-A,  
wherein Pacific American Fisheries, Inc., a corpora-  
tion, is plaintiff-appellant, and M. P. Mullaney,  
Commissioner of Taxation, Territory of Alaska, is  
defendant-appellee, as the same appears of record  
and on file in my office,

That the said record is prepared by virtue of an  
appeal taken by plaintiff-appellant to the U. S.  
Court of Appeals for the Ninth Circuit,

And I Further Certify that this transcript was  
prepared by me at my office and that the cost of  
examination, preparation and certification, amount-  
ing to \$12.55, has been paid to me by counsel for  
plaintiff-appellant.

In Witness Whereof I have hereunto set my  
hand and the seal of the U. S. District Court for

the Territory of Alaska, First Judicial Division,  
this 19th day of July, 1950.

J. W. LEIVERS,

Clerk of the District Court,

[Seal] By. /s/ LOIS P. QUILICO,

Deputy.

---

[Endorsed]: No. 12623, United States Court of Appeals for the Ninth Circuit. Pacific American Fisheries, Inc., Appellant, vs. M. P. Mullaney, Commissioner of Taxation, Territory of Alaska, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed July 21, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals for the  
Ninth Circuit

No. 12623

PACIFIC AMERICAN FISHERIES, INC.,  
a Corporation,

Appellant,

vs.

M. P. MULLANEY, Commissioner of Taxation,  
Territory of Alaska,

Appellee.

STATEMENT OF POINTS RELIED  
ON BY APPELLANT

Comes now the appellant above-named and states that the points to be relied on in the United States Court of Appeals upon this appeal are as follows:

I.

That the District Court was in error in making and entering the Summary Judgment of July 7, 1950, on the ground that Summary Judgment was entered contrary to law and contrary to Rule No. 56 of the Rules of Civil Procedure, and that it was made and entered without any Findings, and the record contains no reason or basis for its entry. (See Rule 41 (b).)

II.

That the Court erred in granting the Summary Judgment and denying injunctive relief to the appellant without consideration of any evidence that

appellant had no adequate remedy at law and would suffer irreparable injury unless an injunction was granted.

### III.

The Court erred in granting the Summary Judgment without giving appellant an opportunity to litigate the questions of law and fact set forth in the pleadings.

### IV.

The Summary Judgment should not have been granted thereby passing upon the question raised in the pleadings as to whether Chapter 66, Session Laws of Alaska, 1949, was passed in violation of Section 8 of the Organic Act of Alaska. Upon this question appellant below was entitled to be heard and to present authorities and argument, but had no opportunity to do so except to state that the Summary Judgment should not be granted until appellant had an opportunity to present that question.

### V.

The dismissal of appellant's complaint in the Court below by means of the Summary Judgment had the effect of denying the relief sought in the complaint and to which relief appellant was entitled.

### VI.

The only reference in the whole record with the Court below to the basis of the Summary Judgment is that contained in an extract from the Journal containing the statement of the Judge that the motion for Judgment was granted "on the ground that there is no issue of fact in view of the lack of

power to grant injunctive relief," but the facts are set forth in the complaint and if proved, would entitle the appellant to injunctive relief.

## VII.

Since no Findings were made and there is nothing in the record to show the basis for the Court's entry of the Summary Judgment and if it is assumed that the basis is contained in appellee's motion for Judgment on the pleadings, this was wholly insufficient to support the Summary Judgment. That motion refers to another case tried in the same Court on different facts from those raised in this case, and nothing was involved in that case regarding the validity of Section 5, Chapter 66, Session Laws of Alaska, 1949, nor the applicability of Section 8 of the Organic Act of Alaska to Chapter 66 of the Session Laws of Alaska, 1949. The Court made no reference to the Anderson case in its Summary Judgment, it made no Findings to support the Summary Judgment, and appellant was not a party to the Anderson case and has had no opportunity to examine the record in that case, except the pleadings, which show that the relief sought was different from the relief sought in this case, for in the Anderson case Section 5, Chapter 66, Session Laws of Alaska, was not in question. Furthermore, the motion assumes in Paragraph 2 that the only relief sought by appellant in this case is the relief from threatened criminal prosecutions, but the pleadings show that the threat of criminal prosecutions was not the only matter involved, but that the equitable relief sought was a prevention of criminal

prosecutions under an alleged invalid statute, and that this relief was necessary not only to prevent criminal prosecutions, but to protect the property rights of appellant.

### VIII.

The Summary Judgment seems based on the erroneous assumption that the only matter involved in the action is the right of the Legislature to discriminate between resident and non-resident fishermen in the matter of license taxes; whereas there was also involved the question of whether or not the Legislature had the power under the circumstances to impose upon the appellant the duty of collecting taxes for the Territory of Alaska, or suffering criminal prosecutions and irreparable injury for failure to do so, regardless of the validity or invalidity of the license tax itself.

Appellant prays that the whole of the record as filed and certified, including this Statement of Points, be printed.

Dated at Juneau, Alaska, July 19, 1950.

FAULKNER, BANFIELD &  
BOOCHEVER,

/s/ H. L. FAULKNER,  
Attorneys for Appellant.

Copy received July 20, 1950.

/s/ JOHN H. DIMOND,  
Assistant Attorney General,  
Attorney for Appellee.

[Endorsed]: Filed July 24, 1950.